Viscount Birkenhead L.C. in the case of *Sutters* v. *Briggs*[2]:—

"It is impossible for the drawer (of the cheque) to know whether the person, be he banker or not, who presents the cheque for payment, is a holder in his own right or a mere agent for collection".

In the present case the specific issue was whether the Bank of China was the holder for value of the appellants' cheques or whether they merely held them as collector for their customer Heng Moh & Co. My view is that that was a question that was incapable of being decided on the affidavit evidence which was before the Court, and in the circumstances I would say was beyond the category of cases to which the Order was intended to apply as described by Bramwell B. that is cases, which "almost on the admission of the defendant are undefended".

In the circumstances I would make an order setting aside the judgment which has been entered and giving the appellants leave to defend.

Order accordingly.

Solicitors: *Braddell & Ramani*; *Presgrave & Mathews.*

YONG YUEN POI v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) December 2, 1960]

[K. L. — Selangor Criminal Appeal No. 64 of 1960]

Criminal Law and Procedure — Tactical onus — Passing to accused — Declaration for obtaining citizenship.

In this case the appellant made a declaration in 1957 for the purpose of obtaining citizenship, that he had been resident in Johore Bahru from 1950 to 1956 and in Kuala Lumpur from 1956 to 1957. He was found to be in possession of a Singapore identity card, issued in March 1950 which showed that then, and again in January 1954, the appellant had stated that his address was at two named places in Singapore, and in April 1957 that his address was in Kuala Lumpur. The learned Magistrate accepted as *prima facie* evidence that it was not true that from 1950 to 1957 the appellant had been resident in the Federation, and convicted the appellant.

Held: in the circumstance of the case the tactical onus passed to the appellant to explain away the entries on his identity card.

CRIMINAL APPEAL.

Robert Hoh for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): There is no doubt as to the universal truth of the proposition that in every criminal case the duty lies upon the prosecution in one way or another to prove the case against the accused person beyond reasonable doubt. In practice, however, the situation very commonly arises in a criminal prosecution that evidence is produced for the prosecution which unless it is contradicted or weakened or explained away in some manner by the defence will justify the conviction of the accused person. In that sense it can be said that what we call the tactical onus has passed to the accused. In other words, if he does not deny and if he does not explain away then the Court is entitled and in some cases is obliged to convict him.

That is just what happened in this case. The appellant made a declaration before the appropriate functionary for the purpose of obtaining citizenship that he had been resident in Johore Bahru from 1950 to 1956 and in Kuala Lumpur from 1956 to 1957, which was in the year in which he made his declaration. He was then somehow or rather found to be in possession of a Singapore registration card which had been issued in March 1950. That in itself might not have amounted to a very great deal but an examination of the card showed that in March 1950 the appellant had stated that his address was at 51, Lincoln Road, Singapore, that in January 1954 he had stated that his address was then at Boon Tiong Road and that on 24th April, 1957, he stated that his address was at 31, High Street, Kuala Lumpur. To my mind the Magistrate was right in accepting that as *prima facie* evidence that it was not true that from 1950 to 1957 the appellant had been resident in the Federation. After all the requirement is continuing residence. The position then was that the tactical onus passed to the appellant to explain away the entries on his identity card. It was not one entry that wanted explaining away; it was three entries that needed explaining away. He made no attempt to do so.

The appeal against conviction is dismissed.

Appeal dismissed.

Solicitors: *Eugene Lye & Hoh.*

MAANI v. MOHAMED

[A. C. J. (Ismail Khan J.) December 6, 1960]

[Seremban — Civil Appeal No. 6 of 1960]

Land Laws — Customary Law — Small Estates Distribution Ordinance, 1955, s.12 — Distribution of property according to customary rule — Personal law.

This was an appeal from an order of the Collector upon an application for the distribution of a small estate consisting of two pieces of land according to customary rule.

Held: the Collector should rehear this case and consider the personal law of the deceased and any local custom forming part thereof and for that purpose to require the attendance of all persons such as the lembagas who may be able to give evidence regarding any custom applicable to his estate of the deceased. *Re Haji Mansur bin Duseh*[1] and *Sali* v. *Achik*[2] considered and followed.

Cases referred to:—

(1) *Re Haji Mansur bin Duseh* [1940] M.L.J. 110.
(2) *Sali binti Haji Salleh* v. *Achik* [1941] M.L.J. 14.
(3) *Haji Hussin* v. *Maheran* [1946] M.L.J. 116.

CIVIL APPEAL.

Parties in person.

Ismail Khan J.: This is an appeal from the order of the Collector upon an application for the distribution of a small estate consisting of two